on the following day, the 15th September 1938, he was charged with a charge in these terms:—

> "That you on 14.9.1938 about 1.30 p.m. at 8½ mile Seremban-Rantau Road, Seremban, being the driver of a goods vehicle No. N.S. 4722, did drive the said vehicle in a dangerous manner and thereby collided against another goods vehicle No. N.S.4387 an offence under section 25 (1) Enactment 17/1937."

Against that charge there appears the following note:—

> "To 23.9.38 for mention. Bail $500/–.
> Sd./– J. P. Biddulph
> 15.9.38.
>
> Bail reduced to $200/–
> Sd./– J. P. Biddulph
> 15.9.38.

Under section 173 (a) of the Criminal Procedure Code when an accused person appears before a Magistrate a charge containing the particulars of the offence of which he is accused shall be framed and read out and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried.

In this case there was the charge and I presume under section 114 illustration (e) of the Evidence Enactment that it was read out and explained to the accused and that he claimed to be tried although the note above does not specifically say so.

The position then is that on the 15th September the accused was actually charged before the Magistrate and the matter was adjourned

The case was adjourned from time to time on account of the fact that the driver of the other lorry who was a material witness in the case was lying injured in hospital as a result of the accident and it finally came on for hearing on the 10th November 1938 before the learned Magistrate at Seremban.

The learned Magistrate convicted the accused but has referred the matter to this Court as to the effect of section 34 of the Road Traffic Enactment 1937.

Beyond the charge no notice under section 34 was ever served on the accused.

I am greatly indebted to the learned Deputy for the great assistance he has rendered me by his able argument of this case.

My only regret is that the accused was not represented before me.

From a study of that part of the Road Traffic Enactment 1937 which contains sections 25, 26, 32 and 34 it seems clear to me that the real object of section 34 is to give a motorist reasonable notice of an intended prosecution for certain offences so as to give him an opportunity of throwing his mind back to some reasonable time. It seems to me to be manifestly just and fair that some period of time should be fixed since otherwise a motorist might be suddenly summoned today for speeding at some place or other some two months or so ago and he would probably find it extremely difficult to meet such a charge.

In this case the charge gave the accused on the very next day after the accident all the particulars of the matters that he had to meet and he cannot be said to have had no notice of the charge against him.

Section 34 requires "notice of the *intended* prosecution" to be served. To my mind an intended prosecution and an actual prosecution are two distinct and separate things. In the one it is merely an intention while in the other it is an accomplished fact.

Section 32 authorises the arrest of a motorist found committing an offence under section 26. Surely he can be tried and convicted at any time within 14 days of the commission of the offence without any notice being served on him under section 34. This is so because the prosecution has been launched against him and there is no longer any question of any intention to prosecute him, that intention having so to speak merged in the actual prosecution.

It seems to me therefore that if he can be convicted within 14 days without the notice under section 34 there is no legitimate reason why he could not be convicted after the 14 days so long as the prosecution was instituted against him within 14 days.

For these reasons I have come to the conclusion that the provisions of section 34 apply only to those cases where proceedings are instituted by summons and not to proceedings where an accused person has been arrested under the provisions of section 32 and produced and charged before a competent Court forthwith.

I accordingly hold that in this case the conviction is right and I direct the learned Magistrate to proceed to determine the case.

Conviction affirmed.

[APPELLATE CRIMINAL JURISDICTION]

HASTINGS, J.

July 21, 1938.

KHOR PENG YAM.....Appellant

vs.

PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 31 of 1938]

Rubber Regulation Enactment, No. 37 of 1936 Sec. 19—planting of rubber trees on "any acre."

It is not permissible for any owner of a holding to plant on any acre of the holding which had rubber plants growing thereon whether before or after the 1st day of June, 1934, which has not been planted in contravention of the Rubber Regulation Enactment more than 30 trees

for each acre of the holding. This is so even though the owner does not plant more trees than the acreage of his holding multiplied by 30.

MAGISTRATE'S CRIMINAL APPEAL.

Das for the Appellant.

R. M. Cruer, D.P.P. for the Respondent.

Cur. Adv. Vult.

HASTINGS, J.—In this case the Appellant was charged with planting rubber on Lot No. 4416 in the Mukim of Senggang, in contravention of the provisions of section 19 of Enactment 37 of 1936.

The first point put forward on behalf of the Appellant was that the charge was not specified with sufficient particularity, and that it did not disclose under which subsection of the section the charge was laid. I do not think that there is any substance in this point.

It is only subsection (i) of section 19 that deals with the planting of rubber. Subsection (ii) deals with replanting. And I think that the charge gave to the accused notice of a matter with which he was charged; and that he was charged, with an offence under subsection (i). But the main contention of Mr. Das was that under the wording of section 19 it was permissible for any owner of a holding to plant on any acre of the holding which had had rubber plants growing thereon whether before or after the first day of June, 1934, which had not been planted in contravention of the Enactment to the extent of 30 trees for each acre of the holding, that is to say, that provided the owner does not plant more trees than the acreage of his holding multiplied by 30 he commits no offence.

The facts were shortly that the Appellant had planted about 880 trees on six acres of his holding of 26 acres 2 roods and 36 poles. If Mr. Das' contention is correct he would be entitled to plant about 800 and the Assistant Legal Adviser suggested that in any case an offence had been committed. This is technically true, but the Appellant was convicted on the view that Mr. Das' contention was not correct and further all trees planted in contravention of the section can be eradicated and it would make a considerable difference to the Appellant if 880 trees were eradicated when only 80 should be. It is therefore necessary to deal with the point.

In order to deal with this contention it is necessary to examine the section. In my opinion the interpretation is as follows. Subsection (i) starts with a prohibition of all planting of rubber and goes on with a proviso that planting 30 trees on any acre of any holding to replace trees formerly growing thereon shall not be deemed to be planting. It deals with what is generally termed "supplying." Subsection (ii) deals with replanting which is defined as planting more than 30 plants or seeds on any acre of rubber. This can be done only with the leave of the Controller. No leave was obtained and the Appellant does not claim to come under this subsection.

Now the word "any" does not admit of limitation but the question is what does the section permit the owner to do with "any acre" and the answer is to plant 30 rubber plants upon it. Mr. Das' contention is that it means he may plant 90 or 100 rubber plants upon it provided he refrains from planting any upon some other acre on which he has the right to plant 30. In my opinion this contention is not sound and the meaning of the section is that the owner may plant 30 plants and 30 only upon any one acre—and that to plant more than 30 upon any one acre constitutes an offence. Mr. Das urges that in practice an owner may have properly planted 60 trees on two acres or many more trees on a larger area and that by selection of a certain area it might appear that more than 30 trees had been planted on a given acre. This is no doubt true, but I do not anticipate any danger of such a case happening in fact.

In my view, therefore, the Appellant's contention fails and the appeal is dismissed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

September 21, 1938.

PUBLIC PROSECUTOR.....Appellant

v.

W. B. R. RUDGUARD .....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 92 of 1938]

Criminal Procedure Code, S.S. 305, 307—Conviction on a plea of guilty—inadequacy of sentence—whether appeal by Public prosecutor lies as to.

The respondent was convicted on a charge of causing death by a rash act not amounting to culpable homicide, on his own plea of guilty, and fined $500 and disqualified from holding a license for three years. The Public Prosecutor appealed on the ground that the sentence was inadequate. On behalf of the respondent it was contended that in view of Section 305 of the Criminal Procedure Code an appeal could not lie as Section 305 gives the accused person only the right of appeal as to sentence.

Held, that "Public Prosecutor" comes under the description of "any person" in Section 307 of the Code without being specifically mentioned and that "there shall be no appeal" mean "there shall be no appeal by any person," and that accordingly Section 305 admits of an appeal by the Public Prosecutor when the accused has pleaded guilty.

CRIMINAL REVISION.

M. C. Hay, (D.L.A.) for the Appellant.

Mills for the Respondent.

Cur. adv. Vult.

TERRELL, AG. C.J.—The Respondent was charged with causing the death of one Taib bin Nagah by a rash act not amounting to culpable homicide, an offence punishable under section 304A of the Penal Code. The Respondent pleaded guilty, and was convicted, and fined $500, and